

City of Detroit

CITY COUNCIL

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TO: COUNCIL MEMBERS

FROM: Irvin Corley, Jr., Fiscal Analysis Director *ICJ*
Derrick Headd, Fiscal Staff Analyst *DH*

DATE: October 6, 2009

RE: PDD's **2008** Jobs & Investment Monitoring Report Industrial
Development District Tax Abatement (Public Act 198) **Council**
Resolution for Reduction or Revocation Public Hearings

In our July 7, 2009 report on the Planning and Development Department's (PDD) June 5, 2009 report, relative to its 2008 Public Act 198 Jobs and Investment Monitoring reports. We reported our findings to the Planning and Economic Development Committee.

Upon the recommendation of PDD, it was our recommendation that Your Honorable Body begin the process of holding public hearings to revoke the 18 abatements listed as non compliant by PDD, due to a lack of submitting their contractually required Annual Status Reports (surveys). Based on a closer review of the aforementioned 18 abatements, we determined that five (5) of the abatements had already expired, making the process of conducting hearings for reduction or revocation of the five expired abatements listed below, moot:

Expired Certificates

Certificate Number	Company (Facility)	Proj Jobs Retained	Proj Jobs Created	Proj Jobs Total	Date of Expiration
96-713	Detroit Automotive Interiors	64	17	81	2008
96-707	Euro-American Brewers	2	24	26	2008
96-714	Interstate Brands (Continental Baking 2001*)	252	0	252	2007
97-418	Lorro (Meridian Auto Systms)	150	30	180	2008
97-060	Tyssenkrupp (Budd)	970	0	970	2008
	FACILITIES TOTALS	1,438	71	1,509	

Conclusion

Attached, please find our resolution and the list of the 13 remaining non-expired tax abatements, associated with the companies that have not reported to PDD, in accordance to Section 3 of the Industrial Facilities Exemption Certificate Agreement (between the City and each individual tax abatement recipient). Section 3 requires that each abatement recipient provide an Annual Status Report to the Planning and Development Department (PDD) "...each year... throughout the term of the IFEC, the Applicant shall submit to the Planning and Development Department of the City a certified status report ("Status Report") signed by an authorized officer of the Applicant."

Accordingly, Section 5 of the Certificate Agreement has the following two provisions, **"The City may, in its sole discretion, request that the Michigan State Tax Commission reduce the remaining term of the IFEC or revoke the IFEC if; 1) the Applicant fails to provide the City with the information or ... required to be provided to the City."** And **"Prior to taking any action to request reduction of the term of the IFEC or revocation of the IFEC, the City must afford the Applicant an opportunity to present at a public hearing reasons for any shortfall by the applicant in its compliance with this Agreement."** The language of the two provisions above, are the basis for the required public hearings.

Please contact us if we can be of any further assistance.

Attachments:

Attachment 1	Resolution for Tax Abatement Revocation and or Reduction Hearing
Attachment 2	ABATEMENTS SUBJECT TO REVOCATION AND OR REDUCTION HEARINGS
Attachment 3	Industrial Facilities Exemption Certificate Agreement (Sample)

Council Divisions

Auditor General's Office
Warren Palmer, Planning & Development Department
Marja M. Winters, Planning & Development Department
Brian Watkins, Planning & Development Department
Clinton Griffin, Planning & Development Department
Norman White, Chief Financial Officer
Pamela Scales, Budget Director
Linda M. Bade, Chief Assessor
Kim Miller, finance Assessors
Christine Granger, Human Rights
Gwendolyn Cook-Jones, Human Rights
Samuel Owens, Human Rights
Kamau Marable, Mayor's Office

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Attachment 1

By Councilmember _____

WHEREAS, The mission of the Detroit City Council is to promote the economic, cultural and physical welfare of Detroit's citizens through Charter-mandated legislative functions; and

WHEREAS, A key legislative function of the Detroit City Council involves the approval and monitoring of contracts involving City business, and

WHEREAS, The Detroit City Council has a charter mandated responsibility to provide for the laying and collecting of rents, tolls excises and taxes, and

WHEREAS, In order to promote economic development, the City of Detroit uses the Michigan Public Act 198 of 1974 Tax Abatement Program as a development tool to maintain existing jobs and create new job opportunities in Detroit, by providing property tax incentives to industry and to primarily expand aging manufacturing plants or to build new plants in the city, and

WHEREAS, The Detroit City Council has determined upon the recommendation of the Planning & Development Department (PDD), to set hearings that 13 tax abatement facilities have not reported in accordance to Section 3 of the Industrial Facilities Exemption Certificate Agreement, to provide an **Annual Status Report by the Applicant**, to "...each year... throughout the term of the IFEC, the Applicant shall submit to the Planning and Development Department of the City a certified status report ("Status Report") signed by an authorized officer of the Applicant," and

WHEREAS, Under **Section 5 of the Certificate Agreement**, "The City may, in its sole discretion, request that the Michigan State Tax Commission reduce the remaining term of the IFEC or revoke the IFEC if; 1) the Applicant fails to provide the City with the information or ... required to be provided to the City." and,

WHEREAS, Also under **Section 5**, "Prior to taking any action to request reduction of the term of the IFEC or revocation of the IFEC, the City must afford the Applicant an opportunity to present at a public hearing reasons for any shortfall by the applicant in its compliance with this Agreement" and

NOW BE IT THEREFORE RESOLVED, That the Detroit City Council respectfully requests that each company associated with the attached list of abatement facilities, appear before the Detroit City Council to formally present at a public hearing the reasons for any shortfall by the applicant in its compliance with this Agreement, on the appointed date and time specified by Council.

Abatement Recipients that have not responded to the Planning and Development Department's Annual Status Report (survey).

ABATEMENTS SUBJECT TO REVOCATION AND OR REDUCTION
HEARINGS:

Certificate Number	Company (Facility)	Proj Jobs Retained	Proj Jobs Created	Proj Jobs Total	Date of Expiration
00-549	Commonwealth Industries (Metadyne)	57	10	67	2014
99-427	Corver Engineering	118	9	127	2013
00-522	Detroit Automotive Interiors	64	17	81	2014
00-274	DTI Molded Products	8	23	31	2012
01-509	General Mill Supply	19	0	19	2013
04-516	Hall Steel Company	18	14	32	2016
00-533	Kaufman Window & Door	36	8	44	2013
98-673	Lear	527	6	533	2010
99-472	Mackie Automotive Systems	0	63	63	2011
98-159	Rampart Industries	22	0	22	2011
99-333	Ring Screw Textron	0	30	30	2012
97-564	Stylecraft Products	167	29	196	2011
98-356	Voss Lantz	97	2	99	2011
	FACILITIES TOTALS	1,133	211	1,344	

Attachment 3

INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2006, by and between the City of Detroit, acting by and through its Planning and Development Department ("the City") ("the Applicant").

WITNESSETH:

WHEREAS, the Applicant has submitted an Application ("Application") to the City for adoption of a resolution giving the City's approval to an Industrial Facilities Exemption Certificate ("IFEC"), pursuant to Public Act _____ of 1974, as amended, for real and personal property ("Facility") located at _____. (A copy of the _____ is attached hereto as Exhibit "A"); and

WHEREAS, The Applicant is making real and personal property improvements for the purpose of expanding capacity; and

WHEREAS, as part of its application for an IFEC, the Applicant has submitted an employment plan to the City of Detroit Human Rights Department (a copy of the employment plan is attached hereto as Exhibit "B") wherein it has represented that during the term of the IFEC it shall not discriminate in its employment practices because of an individual's age, sex, race, color, creed, religion, marital status, national origin, political orientation, sexual orientation, or non-disabling handicap, and that it will take affirmative action to recruit and hire minority persons and women in accordance with specified targets; and

WHEREAS, pursuant to Section 22 of Michigan Public Act No. _____ of 1993, effective December 31, 1993, it is necessary that the City and the Applicant enter into a "written agreement" prior to approval and issuance of an IFEC by the Michigan State Tax Commission; and

WHEREAS, to encourage approval of the IFEC and in recognition of the investments the City will make toward the economic growth of the Applicant, which in turn will benefit the City, the Applicant agrees as follows:

1. General.

a. The Applicant will complete the real and personal property improvements set forth in the Application.

b. The Applicant will be required to create five (5) new full time employees at the Facility within two years of the Approval date.

c. The Applicant will retain:

I) two hundred seventy seven (_____) full-time employees for two (2) years from the Approval Date.

II) two hundred eighty two (_____) full-time employees at the Facility commencing two (2) years from the Approval Date and throughout the term of this Agreement.

For the purposes of this Agreement, a "full-time employee" shall include a person 1) who is employed by the Applicant on a salary, wage, commission, or other basis, for a minimum period of _____; and 2) from whose compensation the Applicant is required by law to withhold for City income taxes.

2. Annual Affirmative Action Report by the Applicant.

On or before _____ and each year thereafter, throughout the term of the IFEC, the Applicant shall submit to the Human Rights Department of the City of Detroit a current Contract Compliance Report (Form EEO-1); and 2) a current Employer Information Report (Form EEO-2). If requested in writing by the Human Rights Department of the City, the Applicant shall also submit to the Human Rights

Attachment 3

Department of the City an Affirmative Action Plan, which sets forth the future affirmative action goals of the Applicant at the Facility, and the means by which the Applicant intends to effectuate those goals. The provisions of the Affirmative Action Plan must be approved by the Director of the City Human Rights Department.

3. Annual Status Report by the Applicant.

On or before _____, and each year thereafter, throughout the term of the IFEC, the Applicant shall submit to the Planning and Development Department of the City a certified status report ("Status Report") signed by an authorized officer of the Applicant. The Status Report shall set forth the affirmative action accomplishments, the average number of full-time employees at the Facility during the calendar year preceding the date of the Status Report, and the Facility costs as of December 31st preceding the Status Report. For purposes of this agreement, the average full-time employees shall be computed as the average of the number of full-time employees at the Facility on March 31st, June 30th, September 30th, and December 31st of the calendar year preceding the date of the Status Report. The information contained in the Status Report shall be in substantially the same form as is attached hereto as Exhibit "C".

4. Review and Audit of Application Employment Information.

The Applicant agrees to provide the City with sufficient information, and the City may review and audit the information provided by the applicant, in order to determine compliance with this agreement. If the Applicant fails to provide employment information satisfying the needs of the City, the Applicant will provide the City and the Michigan Employment Security Commission (MESC) written authorization, in a form acceptable to the City and MESC, to use and develop appropriate MESC documents, such as, but not limited to, the MESC Multiple Worksite Report, to verify the number of full-time employees stated in the annual Status Report. IN the event the Applicant fails to provide the City with any information required to be provided to the City under this Section, the Applicant agrees to reimburse the City for all costs, including attorney's fees, incurred by the City to verify the information that was withheld.

5. Revocation or Reduction of Term of IFEC for Affirmative Action or Facility Cost Shortfalls, or Non-Compliance with Prevailing Wage Requirements.

The City may, in its sole discretion, request that the Michigan State Tax Commission reduce the remaining term of the IFEC or revoke the IFEC if; 1) the Applicant fails to provide the City with the information or Affirmative Action Plan required to be provided to the City under Section 2 above; 2) the affirmative action accomplishments at the Facility are less than those to which the Applicant committed itself in the most recent affirmative action plan approved by the City Human Rights Departments, due to the failure of the Applicant to use its best efforts to effectuate the Affirmative Action Plan; or 3) if the Facility cost is substantially less than that to which the Applicant committed itself in the Application; or 4) the Applicant failed to pay the prevailing wages for construction work on the project for which it is seeking an Industrial Facilities Exemption Certificate. Prior to taking any action to request reduction of the term of the IFEC or revocation of the IFEC, the City must afford the Applicant an opportunity to present at a public hearing reasons for any shortfall by the applicant in its compliance with this Agreement.

6. Payment of Abated Taxes for Shortfall of Employment

If the average number of new and retain full-time employees at the facility during the calendar year preceding the date of the Status Report is less than the number of new and retained employees set forth in section 1 above, the Applicant agrees to pay the City, in addition to the Industrial Facility Tax due under the IFEC on the Facility, an amount equal to the difference between the amount of ad valorem tax otherwise due on the Facility without the IFEC, and the amount of Industrial Facility Tax due on the Facility under the IFEC, for the calendar year preceding the Status Report, multiplied by a fraction, the numerator of which is the shortfall in the number of new and retained full-time employees indicated in the Status Report, and the denominator of which is the total number of new and retained full-time employees set forth in Section 1 above. Prior to taking any action to require the Applicant to pay any amount to the

Attachment 3

City pursuant to this Section, the City must afford the Applicant an opportunity to present at a public hearing reasons for any shortfall by the Applicant in its compliance with this agreement.

7. Reimbursement of City Costs upon Discontinuance of Operations.

a. To enable the Applicant to make the improvements or to install the equipment, machinery, future and fixtures as set forth in the amended Application, or to enable the applicant to operate the Facility, the City may incur costs for site acquisition, infrastructure improvements, or for other related purposes, as may be agreed to in writing between the City and the Applicant. If during the term of the IFEC the Applicant shall discontinue operations at the Facility, the applicant agrees to reimburse the City for any such agreed upon costs incurred by the City.

b. The Applicant agrees that if during the term of the IfEC it shall decide to discontinue operations at the Facility, the Applicant shall send written notification to the Director of Development Activities of the City Planning and Development Department within thirty (30) days of such decision. The Applicant further agrees that, within thirty (30) days of the actual discontinuance of operations, the Applicant shall send written notification of the actual termination of the Director of Development Activities of the City Planning and Development Department.

8. Living Wage Ordinance.

The Applicant acknowledges receipt of a copy of the Detroit Living Wage Ordinance ("Ordinance") which copy is attached as Exhibit "D" and made a part hereof, and the Applicant affirms that it will comply with this Ordinance in all respects unless specifically exempted by the language of the Ordinance. In the event the Applicant violates the Ordinance, the Applicant shall pay to each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violation of the Ordinance shall constitute a material breach of this agreement and will entitle the City to revoke, or seek revocation, of the Certificate. Willful violation of the Ordinance will result in a penalty paid to the City in the amount of \$50.00 per violation for each day the violation continues. In the event the Applicant is assessed the \$50.00 penalty based on more than three (3) incidents within a two (2) year period, the Applicant shall be barred from entering into any contracts with the City for a period of ten (10) years from the last violation.

9. Prevailing Wage Requirements.

The Applicant agrees that Detroit Ordinance ch 18, at 5 div 4 is made applicable to this Agreement by section 18-5-65 thereof and agrees that wage and fringe benefit rates paid to each class of building trades workers performing construction work for which an Industrial Facilities Exemption Certificate is requested shall not be less than the rate prevailing in the City. See Exhibit E for a copy of the applicable Ordinance and the rates.

10. Reservation of Remedies.

The City and the Applicant agree that each of the rights and remedies provided by this Agreement may be exercised separately or cumulatively, and shall not be exclusive of any other rights and remedies provided by law. Invalidation of any of the provisions contained in this Agreement by operation of law, judgement, court order, or otherwise shall not invalidate any of the other provisions of this Agreement.

11. Effective Date.

This Agreement shall become effective upon issuance by the Michigan State Tax Commission of an IFEC covering the facility, and shall be null and void and of no force or effect whatsoever unless the Michigan State Tax Commission issues an IFEC to the Applicant covering the Facility. This Agreement shall terminate thirty (30) days after the due date of the Status Report required by Section 3 above pertaining to the final year the IFEC is in force, or thirty (30) days after the actual filing of said Status Report, whichever is later.

Attachment 3

12. Headings.

The headings contained in this Agreement are for descriptive purposes only, and do not alter or govern the substantive content of the provisions of this agreement.

IN WITNESS WHEREOF, the City and the Applicant, by and through their authorized officers and representatives, have executed this agreement as of the date first above written.

WITNESSES:

1. _____

By: _____
Signature

2. _____

Its _____
Title

STATE OF MICHIGAN)
)
COUNTY OF WAYNE)

The foregoing instrument was acknowledge before me this _____ day of _____, A. D. 200____

By _____, the _____ of _____
on behalf of the Company.

Subscribed and sworn on this _____ day of _____, 200____.

Notary Public for the County of _____, Michigan

My commission expires _____

WITNESSES:

CITY OF DETROIT
PLANNING AND DEVELOPMENT DEPARTMENT

1. _____

By: _____

2. _____

Its: _____